

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

METUCHEN CENTER, INC.,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE  
COMPANY; WEST AMERICAN  
INSURANCE COMPANY; and XYZ  
COMPANY 1-100 (a fictitious name for  
insurance companies and underwriters  
presently unknown),

Defendants.

Civil Action No.: \_\_\_\_\_

Removed from:

Superior Court of New Jersey  
Law Division – Middlesex County

Docket No.: MID-L-004490-20

**NOTICE OF REMOVAL**

**TO: Clerk of the Court**  
United States District Court  
District of New Jersey  
Clarkson S. Fisher Building & U.S. Courthouse  
402 East State Street, Room 2020  
Trenton, New Jersey 08608

**Michael J. Deem, Esq.**  
R.C. SHEA & ASSOCIATES  
24 Main Street – P.O. Box 2627  
Toms River, New Jersey 08754-2627  
*Attorneys for Plaintiff*

**PLEASE TAKE NOTICE THAT** pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendants, Liberty Mutual Insurance Company (hereinafter “Liberty Mutual”) and West American Insurance Company (hereinafter “West American”) (collectively referred to as the “Defendants”), by their undersigned attorneys, Finazzo Cossolini O’Leary Meola & Hager, LLC, hereby remove the above-captioned civil action, and all claims and causes of action therein, from the Superior Court of New Jersey, Law Division, Middlesex County, 56 Paterson Street, New

Brunswick, New Jersey, to the United States District Court for the District of New Jersey. The grounds for removal are as follows:

1. Plaintiff commenced an action seeking damages against Defendants in the Superior Court of New Jersey, Law Division, Middlesex County, by filing a Complaint on July 7, 2020.

2. On July 8, 2020, Liberty Mutual was served with copies of the Summons and Complaint. A true and complete copy of the Summons and Complaint, together with Affidavits of Service, are attached hereto as Exhibit “A”.

3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. § 1441, in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

4. According to the allegations in the complaint, Plaintiff Metuchen Center, Inc. is a corporation with its principal place of business in New Jersey. Complaint, ¶ 8. Additionally, according to the Business Entity information contained on the State of New Jersey Division of Revenue and Enterprises Services website, Plaintiff is also incorporated under the laws of the State of New Jersey. Plaintiff is therefore a citizen of New Jersey.

5. Defendant Liberty Mutual is a corporation with its principal place of business in Massachusetts and is incorporated in the State of Massachusetts. Liberty Mutual is therefore a citizen of Massachusetts.

6. Defendant West American is a corporation with its principal place of business in Massachusetts and is incorporated in the State of Indiana. West American is therefore a citizen of Massachusetts and Indiana.

7. Accordingly, there is complete diversity of citizenship between the parties, thereby satisfying the diversity of citizenship requirement of 28 U.S.C. § 1332.

9. This matter involves Plaintiff's claims for declaratory judgment, breach of contract and bad faith in which it alleges that the policy of insurance that West American issued to Plaintiff provides coverage for Plaintiff's alleged loss of business income caused by the claimed shutdown of its business operations beginning on March 21, 2020, after the Governor of the State of New Jersey issued Executive Order 107 in an effort to mitigate the spread of the novel coronavirus that causes COVID-19. Complaint, Ex. A, ¶¶ 3, 10.

11. Plaintiff's Complaint does not include a statement of Plaintiff's claimed damages or any other information identifying Plaintiff's damage claim. Nor were Defendants in receipt of any other pleadings setting forth the amount of Plaintiff's claimed damages. Accordingly, on July 31, 2020, Defendants' counsel issued a demand for a statement of damages from Plaintiff for the purpose of determining whether Plaintiff's damage claim exceeded the sum of \$75,000, exclusive of interest and costs, thereby satisfying the amount in controversy requirement of 28 U.S.C. §1332. Follow-up written communications from Defendants' counsel to Plaintiff's counsel for Plaintiff's statement of damages were issued on August 3, 2020, August 18, 2020 and August 24, 2020. On August 24, 2020, Plaintiff's counsel confirmed that Plaintiff's damage claim in this action exceeded the sum of \$75,000.

12. Plaintiff also seeks attorney's fees and costs of suit. *Id.*, Wherefore Paragraphs. In addition to compensatory damages, potential awards of attorney's fees and punitive damages can count toward the amount in controversy. See *Suber v. Chrysler Corp.*, 104 F.3d 578, 585 (3d Cir. 1997) (finding that in calculating the amount in controversy, a consideration of potential attorney's fees is warranted).

13. Accordingly, this Notice of Removal is timely pursuant to 28 U.S.C. §1446 because it is filed within 30 days after receipt by Defendants, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based.

14. Defendants will promptly serve a copy of this Notice of Removal on counsel for Plaintiff, and will file a copy of this Notice of Removal with the Clerk of the Superior Court of New Jersey, Middlesex County, pursuant to 28 U.S.C. § 1446(d).

**WHEREFORE**, Defendants, under 28 U.S.C. §§ 1332, 1441 and 1446, remove this action in its entirety from the Superior Court of New Jersey, Middlesex County, to the United States District Court for the District of New Jersey.

Dated: September 11, 2020

**FINAZZO COSSOLINI O'LEARY  
MEOLA & HAGER, LLC**

By: /s/ Christopher S. Finazzo  
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*Attorneys for Defendants,  
Liberty Mutual Insurance Company and  
West American Insurance Company*

**CERTIFICATION PURSUANT TO L. CIV. R. 11.2**

I certify that the subject matter now before this Court is not part of any other action pending in any Court or of any pending arbitration or administrative proceeding, except the Middlesex County Superior Court, Law Division action upon which this removal application is based (MID-L-004490-20).

Dated: September 11, 2020

**FINAZZO COSSOLINI O'LEARY  
MEOLA & HAGER, LLC**

By: /s/ Christopher S. Finazzo  
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*Attorneys for Defendants,  
Liberty Mutual Insurance Company and  
West American Insurance Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of September, 2020, I caused to be electronically filed the enclosed Notice of Removal and attached exhibits through the Court's CM/ECF filing system, and forwarded one copy of the Defendants' Notice of Removal, and attached exhibits, and Certificate of Service, via Email to the following counsel of record for Plaintiff:

**Michael J. Deem, Esq.**  
R.C. SHEA & ASSOCIATES  
24 Main Street – P.O. Box 2627  
Toms River, New Jersey 08754-2627  
*Attorneys for Plaintiff*

/s/ Christopher S. Finazzo  
CHRISTOPHER S. FINAZZO, ESQ.